

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 USIA-06
HA-05 IO-13 /079 W
-----076208 171937Z /45
P 171852Z FEB 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC PRIORITY 5996

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FOR EUR/CE AND L/ECP

E.O. 11652: N/A
TAGS: CPRS, ACLM, GW
SUBJECT: AMENDMENT OF FRG RESTITUTION LEGISLATION

REFS: (A) STATE 37843
(B) BONN 3039

SUMMARY: AS REPORTED IN REFTEL B, THE FRG FEDERAL GOVERNMENT ON SEPTEMBER 24, 1977 PROMULGATED THE SO-CALLED "SECOND ORDINANCE TO AMEND THE SIXTH ORDINANCE TO IMPLEMENT THE FEDERAL RESTITUTION LAW" IN THE FEDERAL LAW GAZETTE NR. 64/1977, PART I. THE GERMAN TEXT AND ANNEX TO THIS LAW ARE BEING POUCHED TO EUR/CE AND L/ECP.

THE FEDERAL GOVERNMENT, IN SUBMITTING THIS ORDINANCE TO THE GERMAN BUNDES RAT FOR APPROVAL, FURNISHED THE JUSTIFICATION AND EXPLANATORY REMARKS (LIBERALLY TRANSLATED) CONCERNING THE PROVISIONS OF THE ORDINANCE THAT ARE GIVEN BELOW. END SUMMARY

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1. BEGIN QUOTE:

JUSTIFICATION: GENERAL: SINCE ANNOUNCEMENT OF THE SIXTH ORDINANCE TO IMPLEMENT THE FEDERAL RESTITUTION LAW (FRL) OF JANUARY 10, 1970 (FEDERAL LAW GAZETTE PART I, PAGE 65), NUMEROUS NEW DOCUMENTS ON FORMER NAZI CONCENTRATION CAMPS (CC'S) HAVE BEEN FOUND. THE FEDERAL

MINISTRY OF FINANCE, IN CLOSE COOPERATION AND COORDINATION WITH THE INTERNATIONAL TRACING SERVICE OF THE INTERNATIONAL COMMITTEE OF RED CROSS AT AROlsen (ITS), HAS EVALUATED THIS MATERIAL. THE FINDINGS MADE WERE INCORPORATED IN THE SUBJECT AMENDMENT WHICH WAS ISSUED ON THE BASIS OF SECTION 42, PARAGRAPH 2 OF THE FRL AS AMENDED BY THE FRL - FINAL LAW OF SEPTEMBER 14, 1965 (FEDERAL LAW GAZETTE, PART I, PAGE 1315). THE AMENDMENT ALSO PROVIDES FOR THE REQUIRED PROCEDURAL AND TRANSITIONAL REGULATIONS.

COMMENTS ON THE AMENDMENTS IN DETAIL

2. SECTION 1:

THE NEW LIST OF CC'S AND OTHER PLACES OF INTERNMENT CONTAINS 670 CHANGES OR SUPPLEMENTS TO THE PREVIOUS VERSION, AMONG THEM 125 PLACES MENTIONED FOR THE FIRST TIME. THE LATTER CONCERN PREDOMINANTLY OUTLYING POSTS OF CC'S ALREADY INCLUDED IN THE PREVIOUS LISTING, SEVERAL INDEPENDENT CC'S OF THE EARLY YEARS OF THE NAZI-REGIME, AS WELL AS SOME DEPORTATION TRANSIT CAMPS IN YUGOSLAVIA AND CZECHOSLOVAKIA. ON THE OTHER HAND SOME FEW INTERNMENT LOCATIONS PREVIOUSLY LISTED AS CC'S WERE DELETED AS THESE LOCATIONS, ACCORDING TO RECENT FINDINGS OF THE ITS, DID NOT CONSTITUTE CC'S WITHIN THE LIMITED OFFICIAL USE

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MEANING OF SECTIONS 31, PARAGRAPH 2 AND 42, PARAGRAPH 2 OF THE FRL. IN A NUMBER OF CASES IT WAS ESTABLISHED IN THE MEANTIME THAT THESE INVOLVED ONLY FORCED LABOR LOCATIONS WHERE WORK WAS PERFORMED DURING THE DAY (TAGESARBEITSEINSATZSTELLEN) AND NOT OUTLYING POSTS OF CC'S. THESE CHANGES WERE NOTED BY APPROPRIATE REFERENCES IN THE CC-LIST.

FOR A NUMBER OF PLACES OF INTERNMENT OPENING AND/OR CLOSING-DOWN DATES COULD BE ESTABLISHED FOR THE FIRST TIME. FOR NUMEROUS OTHER INTERNMENT LOCATIONS THE DATA ON SUCH DATES WERE ADJUSTED TO REFLECT THE LATEST FINDINGS.

AS IN PREVIOUS VERSIONS OF THE LIST, IN ORDER TO FACILITATE THE WORK OF COURTS AND ADMINISTRATIVE AGENCIES, AS WELL AS IN THE INTEREST OF THE PERSONS CONCERNED, IN NUMEROUS CASES THE INOFFICIAL CC NAMES USED AT THAT TIME (MOSTLY NAMES OF TOWNS AND VILLAGES) ARE STATED BY WAY OF REFERENCE IN ADDITION TO THE OFFICIAL NAMES OF LOCATIONS. FINALLY, THE SPELLING OR THE DESCRIPTION OF THE LOCATION OF SOME PLACES OF

INTERNMENT HAS BEEN CORRECTED.

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HA-05 IO-13 /079 W
-----076289 171942Z /45

P 171852Z FEB 78
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3. SECTION 2:

PARAGRAPH 1:

THIS PARAGRAPH CONTAINS TRANSITIONAL PROVISIONS FOR THOSE CASES WHERE, ON THE BASIS OF THE PREVIOUS VERSION OF THE LAW, A NEGATIVE DECISION WAS MADE BECAUSE THE PLACE OF INTERNMENT WAS NOT INCLUDED IN THE LIST OF INTERNMENT LOCATIONS APPLICABLE AT THE TIME. IF THE PLACE OF INTERNMENT IS NOW LISTED, THE APPLICANT MAY NOW FILE A APPLICATION FOR A NEW DECISION WITH THE COMPETENT RESTITUTION AUTHORITY. NO SPECIAL REGULATION WAS REQUIRED FOR THOSE CASES IN WHICH AN APPLICATION HAD NOT BEEN FILED AT ALL SO FAR, BECAUSE THE PLACE OF INTERNMENT NOW LISTED WAS NOT PREVIOUSLY INCLUDED IN THE LIST OF INTERNMENT LOCATIONS OF THE ORDINANCE OF JANUARY 10, 1970. IN THESE CASES THE PROVISION OF ARTICLE III, NR. 1, PARAGRAPH 5 OF THE FRL - FINAL LAW APPLIES, ACCORDING TO WHICH A NEW ENTITLEMENT FOR FILING AN APPLICATION ARISES WITHIN A PERIOD OF SIX MONTHS AFTER PROMULGATION OF THE ORDINANCE - IN THIS CASE THE LIMITED OFFICIAL USE

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PRESENT AMENDMENT ORDINANCE. FOR REASONS OF CLARIFICATION IT IS NOTED THAT SECTION 2, PARAGRAPH 1, ACCORDING TO ITS WORDING AND MEANING, COVERS ALSO THOSE CASES WHERE AN APPLICATION PURSUANT TO SECTION 31, PARAGRAPH 2 OF THE FRL HAD BEEN DENIED AND BECOME NON-APPEALABLE OR LEGALLY BINDING PRIOR TO ANNOUNCEMENT OF THE SIXTH ORDINANCE TO IMPLEMENT THE FRL IN THE VERSION PREVIOUSLY APPLICABLE.

4. SECTION 2:

PARAGRAPH 2:

A TRANSITIONAL REGULATION WAS FURTHER REQUIRED FOR THOSE CASES WHERE THE PLACE OF INTERNMENT WAS ALREADY LISTED IN THE ORDINANCE OF JANUARY 10, 1970, BUT THE REQUIRED ONE-YEAR PERIOD OF SECTION 32, PARAGRAPH 2 OF THE FRL IS REACHED ONLY ON THE BASIS OF THE PRESENT ORDINANCE. THIS CAN BE THE CASE AS A RESULT OF NEW INFORMATION ON THE OPENING OR CLOSING-DOWN OF A PLACE OF INTERNMENT IN THE NEW LIST OF CC'S AND OTHER PLACES OF INTERNMENT. THE SAME APPLIES FOR CASES WHERE THE NON-APPEALABLE OR LEGALLY BINDING DECISION WAS NEGATIVE BECAUSE THE ONE-YEAR PERIOD WAS NOT REACHED FOR A CC LISTED IN THE PREVIOUS LIST OF PLACES OF INTERNMENT BUT THE APPLICANT WAS INTERNED IN A FURTHER CC WHICH NOW IS LISTED IN THE NEW LIST OF INTERNMENT LOCATIONS, AND WHERE BOTH PERIODS OF INTERNMENT TOGETHER REACH THE NECESSARY ONE-YEAR PERIOD TO QUALIFY FOR COMPENSATION. HOWEVER, NO SPECIAL REGULATION WAS REQUIRED FOR THOSE CASES WHERE AN APPLICATION HAD NOT BEEN FILED AS THE ONE-YEAR PERIOD HAD NOT BEEN REACHED ON THE BASIS OF THE PREVIOUS LIST OF INTERNMENT LOCATIONS. FOR THESE

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CASES ALSO THE PROVISION OF ARTICLE III, NR. 1, PARAGRAPH 5 OF THE FRL - FINAL LAW APPLIES, WHICH, IN THE OPINION OF THE FEDERAL GOVERNMENT, NOT ONLY REFERS TO THE PLACES OF INTERNMENT LISTED IN THE SIXTH ORDINANCE TO IMPLEMENT THE FRL, BUT TO THE ENTIRE ORDINANCE, INCLUDING THE INFORMATION ON THE TIME SPACE OF OPERATION OF A CC IN THE NEW LIST OF INTERNMENT LOCATIONS.

5. SECTION 2:

PARAGRAPH 3:

THE PROVISION ON THE FILING PERIOD FOR CASES PREVIOUSLY REJECTED WITH LEGALLY BINDING EFFECT CORRESPONDS WITH THAT OF ARTICLE III, NR. 1, PARAGRAPH 5 OF THE FRL - FINAL LAW. IN THE INTEREST OF A UNIFORM REGULATION, IT APPEARED APPROPRIATE TO PROVIDE FOR A FILING PERIOD OF SIX MONTHS ALSO IN THIS REGARD.

6. SECTION 2:

PARAGRAPH 4:

IT IS IN ACCORDANCE WITH GENERAL PRINCIPLES OF RESTITUTION LAW THAT THE SETTLEMENT OF A CLAIM BY DECREE OR LEGALLY VALID COURT DECISION IS PUT ON A PAR WITH A DISPOSITION BY WAY OF COMPROMISE OR SETTLEMENT (C.F. ALSO ARTICLE III, NR. 3 OF THE FRL - FINAL LAW). APPEAL

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HA-05 IO-13 /079 W
-----076281 171943Z /45
P 171852Z FEB 78
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FROM SUCH A DISPOSITION MUST BE LODGED WITHIN SIX MONTHS FOLLOWING PROMULGATION OF THE PRESENT ORDINANCE.

7. SECTION 2:

PARAGRAPH 5:

THIS PARAGRAPH CONTAINS THE PROVISION LETTING LEGALLY

BINDING DECISIONS FAVORABLE TO THE CLAIMANT STAND THAT WERE BASED ON FACTS NOW NO LONGER CONSIDERED APPLICABLE, IN THE VERSION GENERALLY EMPLOYED IN RESTITUTION LAW (C.F. ALSO ARTICLE III, NR. 8 OF THE FRL - FINAL LAW). THE CLAUSE, HOWEVER, APPLIES ONLY TO THE EXTENT THAT IN THE PREVIOUS DECISION NO EXPRESS PROVISIO FOR A NEW SETTLEMENT WAS MADE IN THE EVENT OF A FUTURE CHANGE OF THE FACTUAL OR LEGAL SITUATION.

8. SECTION 3:

THIS SECTION CONTAINS THE NORMAL BERLIN CLAUSE.

9. SECTION 4:

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THE PRESENT ORDINANCE, SIMILAR TO THE ORDINANCES OF FEBRUARY 23, 1967 AND JANUARY 10, 1970, ENTERS INTO FORCE RETROACTIVELY AS OF THE DATE OF THE ENTRY INTO FORCE OF THE FRL - FINAL LAW (I.E. SEPTEMBER 18, 1965), IN ORDER TO ENSURE A UNIFORM ADMINISTRATION OF JUSTICE.

END QUOTE

10. EMBASSY HOPES THAT THE ABOVE SUMMARY WILL HELP TO EXPLAIN THE AMENDMENT, WHEN SEEN WITH THE TEXT OF THE AMENDMENT THAT WILL BE KNOWN TO THE FRG EMBASSY AND THE FRG CONSULATE GENERAL AT NEW YORK ON THE BASIS OF THE FEBRUARY 15 FONOFF INSTRUCTION MENTIONED IN REFTEL B. AMENDMENT AND REVISED LISTS ARE RESULT OF PAINSTAKING PERFECTING OF INFORMATION THROUGH COORDINATED EFFORTS OF ITS AND FINANCE MINISTRY BUT, ACCORDING TO FONOFF REP, STANDTO AFFECT ONLY SMALL NUMBER OF POTENTIAL CLAIMANTS.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 17 feb 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BONN03106
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780074-0606
Format: TEL
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780243/aaaabkio.tel
Line Count: 322
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 6d5e47d5-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 STATE 37843, 78 BONN 3039
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 24 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3566205
Secure: OPEN
Status: NATIVE
Subject: AMENDMENT OF FRG RESTITUTION LEGISLATION
TAGS: CPRS, ACLM, GE
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/6d5e47d5-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014